IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7056 of 1999

to

FIRST APPEALNo 7058 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

MENABEN PUNJAJI

Appearance:

MR KG SHETH, Ld. AGP for Appellants

MR KM SHETH for Respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 09/03/2000

ORAL JUDGEMENT [Per: Kadri, J.]

1. Admitted. Mr.K.M.Sheth, learned Counsel, waives service of notice on behalf of respondent in each appeal. By consent of the learned counsel appearing for the parties, all these appeals are taken up for final hearing today. The learned Counsel for the parties have supplied the copies of evidence and relevant documents for our perusal which have been taken into consideration while deciding these appeals.

2. The appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to be as `the Act') read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated September 1, 1998, rendered by the learned Assistant Judge, Mehsana, in Land Reference Cases Nos.1142/90, 1143/90 and 1147/90, by which the Reference Court determined the market value of the acquired lands of village Ganpatpura at Rs.40/- per sq.mt. as on 11.12.1985.

3. The Executive Engineer, Narmada Project Main Canal, construction division Ahmedabad made a proposal for acquisition of the lands of village Ganpatpura, Taluka Kalol, for public purpose of construction of Narmada Main Canal, Division Ahmedabad. The said proposal was scrutinised by the State Government and notification to acquire lands of the claimants-respondents came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on December 11, 1985. After following the usual procedure under Section 5A and 5A-2 of the Act, declaration under Section 6 of the Act was made and which came to be published on November 5, 1986. Notices under Section 9 of the Act were served on the land owners-respondents. The respondents before the Land Acquisition Officer claimed compensation of their acquired lands at Rs.100/- per sq.mt. The Land Acquisition Officer on the basis of material produced before him, made his award on October 29, 1989, and offered compensation at the rate of Rs.1.50/- per sq.mt. for the acquired lands of village Ganpatpura. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate looking to the fertility and situation of their acquired lands and, therefore, they filed written applications under Section 18 of the Act requiring the Land Acquisition Officer to refer their applications to the District Court Mehsana. The said application came to be

referred to the District Court, Mehsana, which came to be numbered as Land Acquisition Reference Nos.1142/90, 1143/90 and 1147/90.

4. The claimants to substantiate their claim of Rs.100/- per sq.mt examined one Girdharlal Chhanalal Chakubhai Darji at Exh.19. The said witness described the fertility and situation of the acquired lands and produced judgment of previous award delivered in main Land Reference Case No.781/90 of village Jaspur at Exh.20. By the previous award Exh.20, the Reference Court had determined market value of the acquired lands of village Jaspur at Rs.72/- per sq.mt. which came to be reduced to Rs.52/- per sq.mt. by the High Court. For the acquired lands of village Jaspur, notification under Section 4(1) of the Act was published on December 3, 1985. The said witness had also produced the judgment of previous award. The Reference Court relying on the previous award, determined market value of the acquired lands of village Ganpatpura at the rate of Rs.40/- per sq.mt. The previous award Exh.36 on which main reliance was placed by the Reference Court for determination of market value of the present acquired lands was in respect of the lands of same village Ganpatpura. The acquired lands which were subject matter of award Exh.36 came to be acquired by issuance of notification under Section 4(1) of the Act on December 13, 1985, for which Reference Court had determined market value at the rate of Rs.40/per sq.mt. It may be stated that the award Exh.36 was challenged in the High Court by the State of Gujarat in First Appeal No.1322 of 1999 to First Appeal No.1332 of 1999, and the High Court had confirmed the determination of market value of the acquired lands of village Ganpatpura at the rate of Rs.40/- per sq.mt. Notification of the acquired lands of previous award Exh.36 was issued on December 13, 1985, for the same public purpose. It is a settled legal principle that one of the method for determination of market value of acquired lands in absence of any other evidence is to rely on previous award of the Reference Court which have become final and which are comparable and relevant for determination of market value of the acquired lands. We are of the opinion that the Reference Court had not committed any error in placing reliance on award Exh.36 of the same village which had become final by the High Court.

5. The claimants before the Reference Court had also produced the evidence of income from the agricultural produce derived from the acquired lands but the Reference Court had mainly relied on previous award Exh.36. It is

a settled principle as propounded by the Supreme Court that method of yield should be resorted to lastly if there is no other evidence available on the record for the determination of market value of the acquired lands. When previous award of the adjoining lands were already produced before the reference court, in our opinion, the Reference Court was justified in not taking resort to the income derived from the sale of agricultural produce of the acquired lands. In our opinion, a just and reasonable compensation has been awarded by the reference court and, therefore, these appeals does not call for any interference.

6. For the foregoing discussion, we do not find any merit in these appeals. Hence, the appeals fail and are dismissed with no order as to costs.

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